TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~935~~ 91.

L. S. CLARK, PLAINTIFF IN ERROR,

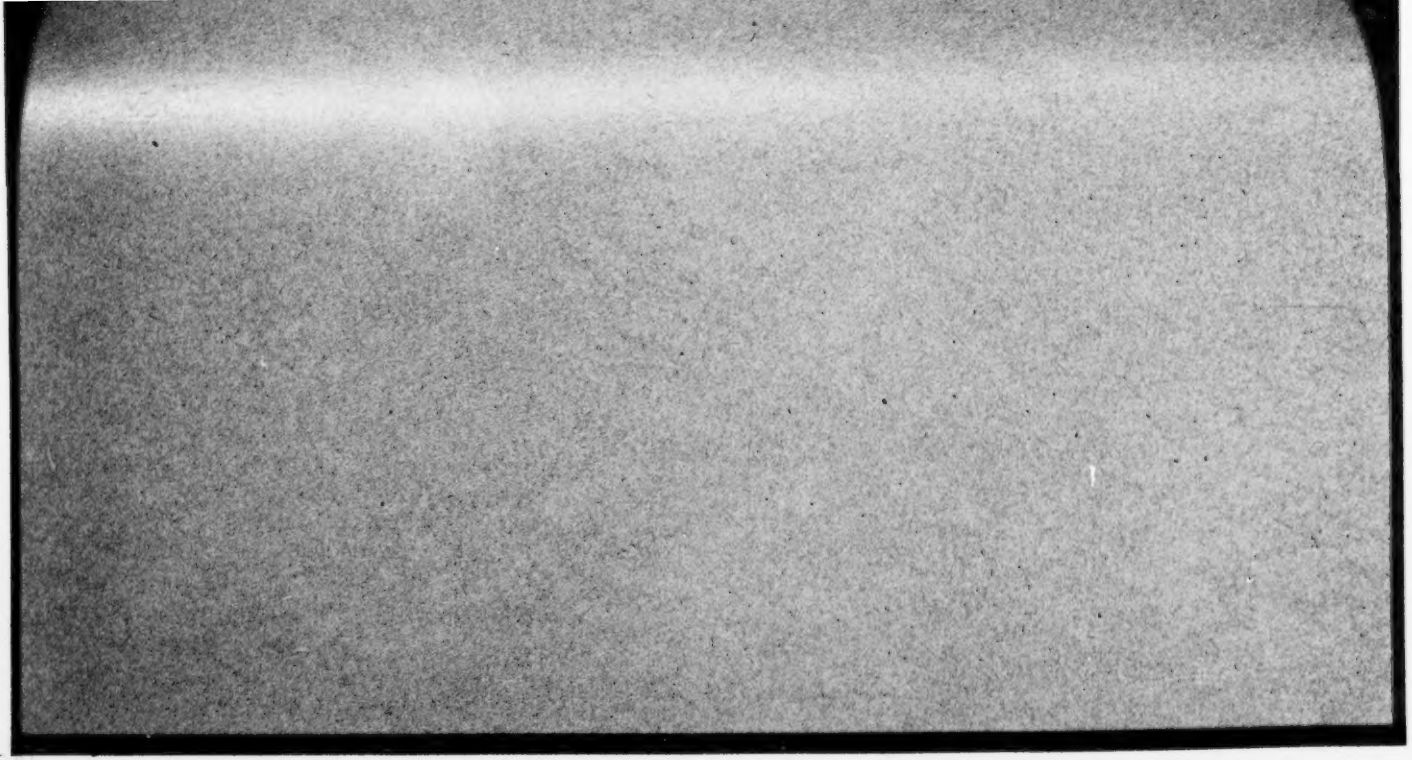
vs.

THE CITY OF TITUSVILLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED JUNE 22, 1900.

(17,810.)



(17,810.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 325

L. S. CLARK, PLAINTIFF IN ERROR,

vs.

THE CITY OF TITUSVILLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 16, 1901.

1-58 * * * * * * *

In the Court of Quarter Sessions of Crawford County, Pennsylvania.

COMMONWEALTH, Use of CITY OF TITUSVILLE, Pa., *vs.* L. S. CLARK.	At No. 57 of February Session, 1897.

And now, March 4, 1897, it is agreed by the parties to the above action that the same shall be tried as upon a case stated, and that the following case be stated for the opinion of the court in the nature of a special verdict:

First. That the city of Titusville, in the county of Crawford, was duly incorporated as a city by the act of General Assembly of Pennsylvania approved February 28, 1866, as will appear by reference to the Pamphlet Laws at page 116.

59 Second. That the said city, by proper ordinance, in 1875 duly accepted the provisions of the act of General Assembly of Pennsylvania approved May 23, 1874, and commonly known as the Wallace act, and thereby became a city of the third class.

Third. That under the provisions of the act of assembly approved May 8, 1889, P. L., 133, the said city is now a city of the third class and governed by the provisions of said act.

Fourth. That on June 25, 1888, the select and common councils of the said city passed, and the mayor thereof approved, the following ordinance:

June 25, 1888.—SEC. 1. That any person who shall deal in the selling of any goods, wares, merchandise, commodities or effects of whatsoever kind or nature, and such other persons, firms, partnerships, associations, companies, agencies, corporations or individuals as are otherwise hereinafter specifically provided for, shall pay to the treasurer of the city of Titusville, for the use of said city, on or before the first Monday of July in this year (1888), and on or before the first Monday of June of each year thereafter, the several sums hereinafter mentioned, as an annual license tax for selling such merchandise and performing such other kinds of business as

60 are specifically provided for in an act of the General Assembly of this Commonwealth dividing cities into seven classes, etc., approved May 24, 1887.

SEC. 2. That upon production to the mayor of said city of the treasurer's receipt for the license tax hereinafter named, the said mayor shall issue to such person, firm, partnership, association, corporation, company, agency or individual, a license in accordance with the terms of said act. Licenses shall be dated as of June 1st and shall continue for one year.

SEC. 3. First. That those who are esteemed and taken to make and effect annual sales to the amount of sixty thousand dollars and upwards, shall constitute class one, and pay one hundred dollars.

Second. Those to the amount of fifty thousand dollars and less

than sixty thousand dollars shall constitute class two, and pay eighty dollars.

Third. Those to the amount of forty thousand dollars and less than fifty thousand dollars shall constitute class three and pay seventy dollars.

Fourth. Those to the amount of thirty thousand dollars and less than forty thousand dollars shall constitute class four, and pay sixty dollars.

61 Fifth. Those to the amount of twenty thousand dollars and less than thirty thousand dollars shall constitute class five, and pay fifty dollars.

Sixth. Those to the amount of ten thousand dollars and less than twenty thousand dollars shall constitute class six, and pay thirty-five dollars.

Seventh. Those to the amount of five thousand dollars and less than ten thousand dollars shall constitute class seven, and pay twenty-five dollars.

Eighth. Those to an amount less than five thousand dollars and more than twenty-five hundred dollars shall constitute class eight, and pay fifteen dollars.

Ninth. Those to the amount of twenty-five hundred dollars and more than one thousand dollars shall constitute class nine, and pay ten dollars.

Tenth. Those to the amount of one thousand dollars and less shall constitute class ten and pay five dollars.

Eleventh. That persons or firms doing a wholesale business exclusively shall constitute class eleven and pay: Those who are estimated and taken to make and effect annual sales to the amount of—

62

$100,000	and	upwards	shall	constitute	class	1	and	pay	.....	$60
60,000	"	"	"	"	"	2	"	"	.....	50
50,000	to	$60,000	"	"	"	3	"	"	.....	40
40,000	"	50,000	"	"	"	4	"	"	.....	35
30,000	"	40,000	"	"	"	5	"	"	.....	30
20,000	"	30,000	"	"	"	6	"	"	.....	25
10,000	"	20,000	"	"	"	7	"	"	.....	20
5,000	"	10,000	"	"	"	8	"	"	.....	15
2,500	"	5,000	"	"	"	9	"	"	.....	10
		2,500	"	"	"	10	"	"	.....	5

Sec. 4. That contractors whose business and real-estate agents whose annual sales exceed one thousand dollars per annum shall be classed and rated as provided for in sec. III of this ordinance, and shall pay licenses according to said section.

Sec. 5. That auctioneers shall pay twenty-five dollars per annum, and their license shall not be transferable.

Sec. 6. That keepers of refreshment stands shall pay a license tax of two dollars and fifty cents per day.

Sec. 7. That peddlers of merchandise and meat peddlers, with

wagon drawn by one horse, shall pay fifteen dollars per annum; peddlers of merchandise and meat peddlers, with wagon drawn by two horses, shall pay twenty-five dollars per annum; peddlers, commonly called "pack peddlers," shall pay five dollars per annum; pawnbrokers shall pay a license tax of fifty dollars per annum; brokers in oil, petroleum or other products, shall pay ten dollars per annum; hawkers shall pay a license tax of five dollars per day; keepers of billiard and bagatelle tables or bowling alleys shall pay for each table or alley five dol-
63 lars per annum; owners of drays, carts or wagons used in the city for pay, drawn by one horse, shall pay a license tax of five dollars per annum for each vehicle; those drawn by two horses shall pay ten dollars per annum; owners of hacks, stages and carriages, shall pay a license tax of ten dollars per annum for each vehicle; owners of omnibuses shall pay a license tax of fifteen dollars per annum for each vehicle; owners of baggage wagons shall pay twelve dollars per annum for each vehicle; livery-stable keepers shall pay for each horse kept for hire, two dollars; circuses and menageries shall pay a license tax of fifty dollars per day. Exhibitions or shows under a tent, other than a circus, shall pay a license tax as follows, to wit: Exhibitions or shows that charge an entrance fee of ten cents, four dollars per day: exhibitions or shows that charge an entrance fee of twenty-five cents or over ten cents, ten dollars per day. That the owner or lessee of any theatre, opera-house or hall for public entertainment, shall pay a license tax of four dollars per night or, in lieu thereof, may pay an annual license tax of seventy-five dollars, to date of June 1st of each year. All other shows, museums, concerts or exhibitions, not herein otherwise provided for, shall pay a license tax of two dollars and fifty cents per day.

SEC. 8. Bill-posters shall pay an annual license tax of
64 twenty-five dollars.

First. Market-house companies, express companies, telegraph, telephone, steam, heating, gas, natural gas, electric light or power companies, or agents or individuals furnishing communication, light, heat or power by any of the means above enumerated, which and who are esteemed and taken to make and effect an annual business of twenty-five thousand dollars or more, shall constitute class one and pay an annual license tax of one hundred and fifty dollars.

Second. Those to the amount of fifteen thousand dollars and less than twenty-five thousand dollars shall constitute class two, and pay a license tax of one hundred dollars.

Third. Those to the amount of ten thousand dollars and less than fifteen thousand dollars shall constitute class three, and pay seventy-five dollars.

Fourth. Those to the amount of five thousand dollars or less than ten thousand dollars shall constitute class four, and pay fifty dollars.

Fifth. Those to the amount of five thousand dollars or less shall constitute class five, and pay twenty-five dollars.

SEC. 10. That each insurance agent shall pay an annual
65 license tax of fifteen dollars per annum.

SEC. 11. First. Banks, bankers and banking associations whose average yearly deposits are esteemed and taken to be four hundred thousand dollars and upwards shall constitute class one, and shall pay an annual license tax of two hundred dollars.

Second. Those to the amount of three hundred thousand dollars and less than four hundred thousand dollars shall constitute class two, and shall pay one hundred and fifty dollars.

Third. Those to the amount of two hundred thousand dollars and less than three hundred thousand dollars shall constitute class three, and shall pay one hundred dollars.

Fourth. Those to the amount of one hundred thousand dollars or less shall constitute class four, and pay fifty dollars.

SEC. 12. That all persons canvassing or soliciting within said city, orders for goods, books, paintings, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the mayor a license to transact said business and shall pay to the said treasurer therefor for one year the sum of twenty-five dollars.

66 SEC. 13. That any person or persons, company, agency, partnership, association or corporation commencing business after the time at which licenses are issuable under this ordinance, shall take out a license from that time until the next yearly issuing thereof, for which period shall be paid, if taken out prior to December 1st, the full amount of a yearly license, and if taken out subsequent thereto, one-half of the said amount. That for the purpose of fixing the amount of license tax to be paid by the several persons, partnerships, associations, firms, companies, agencies and corporations hereinbefore provided for, the respective assessors in and for the several wards of said city, for the present year, prior to June 26, 1888, and at the times of making their annual assessments in subsequent years, shall rate and classify the persons, partnerships, associations, firms, companies, agencies and corporations as by this ordinance herein provided and shall notify such persons, companies, partnerships, associations, firms, agencies and corporations at least three days before the time fixed for appeal, of the amount of license tax assessed and class in which such person, companies, firms, partnerships, associations and corporations are placed.

SEC. 14. That the present committee on taxes shall constitute the board of appeal for the present year and shall meet at the city hall on the 28th day of June of the present year, at 10
67 o'clock a. m. and continue the session for two days and in subsequent years the board of appeal shall consist of the regular board of appeal to be elected as provided in section 7 of article XIX of the act of assembly of this Commonwealth, approved May 24, 1887, dividing cities into seven classes, etc., and all appeals made from assessments as aforesaid, shall be made to the said board of appeal at the time fixed by said board for hearing appeals from assessments on real estate.

SEC. 15. That the mayor shall keep a minute record of licenses

granted and for what purposes and make report of the same to the councils at least once each month.

SEC. 16. That no manufacturer, who is a citizen of the city of Titusville, shall be considered a dealer or vender or merchandise within the spirit of this ordinance unless he sells goods not of his own manufacture.

SEC. 17. That the amount of license required to be paid by any person, firm, company, agency, partnership, association or corporation, upon failure in payment thereof may be recovered in an action of debt before any magistrate, alderman or justice of the peace of said city, together with twenty per cent. added as a penalty, together with costs of suit.

SEC. 18. That any person or persons failing to obtain a license as required by this ordinance shall upon conviction thereof be-
68 fore any magistrate, alderman or justice of the peace of said city forfeit and pay a fine not exceeding one hundred dollars or less than the amount required for a license to such person or persons, together with twenty per cent. added as a penalty with costs of suit, and in default of payment thereof shall undergo a confinement in the city or county prison for a period not exceeding thirty days or perform hard labor upon the streets of or elsewhere in said city, not *succeeding* such period. That any one giving information whereby any person or persons convicted of violation of this ordinance or its supplements, shall be entitled to one-half of any penalty or fines collected for such violation.

Fifth. That the said city of Titusville, by ordinance duly enacted, authorized and directed its real-estate assessors each year to value the amount of business done by the several dealers, vendors, and merchants therein and place them in their respective classes as provided in section three of the said recited ordinance and assess each with the amount of license tax therein provided for.

Sixth. That the said defendant was for the years 1895 and 1896 and prior and subsequent thereto a retail grocer in the said city.

Seventh. That the said assessors for the year 1895 placed
69 defendant in class six as provided in said section three and assessed him with a license tax of thirty-five dollars; that for the year 1896 they placed him in class seven and assessed him with a tax of twenty-five dollars.

Eighth. That the said defendant has not paid the said license, taxes for the years 1895 and 1896; neither have many other vendors dealers, and merchants of the said city, especially those in class ten.

Ninth. That there are in the said city a number of merchant tailors, each of whom for the years 1895 and 1896 and prior and subsequent thereto ran and maintained a store in the said city where he sold suits, overcoats, and clothing manufactured by them to the amount of several thousand dollars annually, and against all of whom the said city, acting under section sixteen of the said ordinance, always has and still does omit to assess any license tax whatever.

Tenth. That there are in the said city a number of tinners and

tinsmiths, citizens thereof, each of whom for the years 1895 and 1896 and prior and subsequent thereto ran and maintained a store in the said city where he sold tinware of his own manufacture to the amount of several hundred dollars annually, and against all of whom the city, acting under said section sixteen, always has and still does fail to assess any license tax whatever.

70 Eleventh. That there is in the said city a tombstone dealer, a citizen thereof, who for the years 1895 and 1896 ran and maintained a store in the said city where he sold tombstones to the amount of several thousand dollars annually of his own manufacture, and against whom the said city, acting under the said sixteenth section, always has and still does fail to assess any license tax whatever.

Twelfth. That there are wholesale dealers, vendors, and merchants in the said city doing business during the years 1895 and 1896 and prior and subsequent thereto who were assessed with a license tax graded according to the tenth class of the third section of the said ordinance of June 25, 1888.

Thirteenth. That there is in the said city a large number of contractors whose business does not exceed one thousand dollars per annum and who for the years 1895 and 1896 and prior and subsequent thereto were neither assessed by the said city nor paid a license tax of any size whatever.

Fourteenth. That there is in the said city a number of real-estate agents whose annual sales for the years 1895 and 1896 and prior and subsequent thereto did not exceed one thousand dollars and who for the said period were neither assessed by the said city nor paid a license tax of any size whatever.

71 Fifteenth. That all the classes named in section three of the said ordinance, except the first, embrace one or more retail vendors, dealers, or merchants in the said city, there being no retail merchant in the said city doing a business each year large enough to place him in the first class.

If the court be of the opinion that the said license taxes against defendant are legal and valid, then a fine be entered for the plaintiff and against the defendant for the total of the said taxes, to be reserved for the use of the city of Titusville, but if the court be not of that opinion, then judgment be entered for the defendant; costs to follow judgment, either party reserving the right to sue out a writ of error or certiorari or appeal from the said judgment.

GEO. A. CHASE,
Solicitor for the City of Titusville.
BYLES & MACKEY,
Attorneys for the Defendant.

Endorsement: No. 57. February sessions, 1897. Commonwealth *v.* L. S. Clark. Agreement of counsel and case stated. Filed March 8, 1897. Curtis S. Clark, clerk (per Mason).

In the Court of Quarter Sessions of Crawford County.

COMMONWEALTH
vs.
L. S. CLARK. } No. —. Feb'y Term, 1897. Case Stated.

72 *Opinion.*

A reargument is ordered in this case.
Per curiam.

CURTIS S. CLARK, *Clerk.*

Endorsement: No. —. Feb'y term, 1898, C. Q. S. Commonwealth *vs.* L. S. Clark. Opinion. Filed Jan. 1, 1898. E. T. Mason, pro. Filed Jan. 4, 1897. Curtis S. Clark, clerk.

In the Court of Quarter Sessions of the Peace of Crawford County.

COMMONWEALTH
v.
L. S. CLARK. } No. 57. February Sessions, 1897.

Surcase stated.

Opinion.

By agreement of counsel this case is tried upon a case stated for the opinion of the court in the nature of a special verdict.

The city of Titusville is and has been since 1875 a city of the third class, and on June, 25th, 1888, the legislative body of said city duly and regularly passed and the mayor of said city duly approved of the ordinance by virtue of which the license tax under consideration is imposed.

The ordinance was evidently enacted by virtue of the unconstitutional act of May 24, 1887, but the municipal actions had under and based upon said act were legally ratified by the
73 act of May 13, 1889.

Melick *v.* Williamsport, 162 P. S., p. 208.
City of Chester *v.* Pennell, 169 P. S., p. 300.

Nor is there any contention of the parties upon this point, but defendant denies the legality of the ordinance upon two grounds, viz:

First. Because certain of the merchants and business men of Titusville are exempt from any taxation whatever; and,

Second. The tax imposed is not uniform, and the classification adopted is prohibited by the fourteenth amendment to the Federal Constitution.

The tax imposed being authorized by clause 4, section 3, of article V of the act of May 23, 1889, is for general revenue purposes, and by virtue of the general taxing powers of the municipality, and not through or by virtue of its police powers.

Williamsport *v.* Wenner, 172 P. S., p. 173.
Oil City *v.* Trust Co., 151 P. S., p. 459.

Section 3 of the ordinance classifies those who make and effect annual sales of divers amounts. Section 4 provides "that contractors whose business and real-estate agents whose sales exceed one thousand dollars per annum shall be classified and rated as
74 provided for in sec. III of this ordinance, and shall pay a license according to said section."

By section 3 no exemption is allowed to persons doing an annual business of less than $1,000, and as contractors and real-estate agents are otherwise classified with the persons making and effecting sales to thus exempt a part of the class doing an annual business of less than $1,000 and impose a tax upon others belonging to the same class is clearly violative of secs. 1 and 2, art. IX, of the constitution of this Commonwealth.

Commonwealth *v.* Brewing Co., 145 P. S., p. 84.
Commonwealth *v.* Sharon Coal Co., 164 P. S., p. 305.
Fox and Wife's Appeal, 112 P. S., p. 337.
Pittsburg *v.* Coyle & Co., 165 P. S., p. 64.

This exemption is class legislation, which is forbidden by the Constitution, and not in any way nor under any guise to be tolerated. This portion of the ordinance must fall, but this defect alone does not render the entire ordinance void.

As was said by our supreme court in Fox and Wife's Appeal, 112 P. S., p. 355, in declaring unconstitutional that part of the act of 1885 which excepted from taxation notes or bills for work or labor done: "But for this vice we are not required to declare the act of 1885 void. The second section of article IX of the constitution provides: 'All laws exempting property from taxation, other than
75 the property above enumerated, shall be void.' The exemption of 'notes or bills for work or labor done' is void under this provision, and drops out of the act of 1885. The exception falls, but the act stands. It will be the duty of the assessors to assess and return such bills or notes the same as other moneyed securities in the hands of individuals."

Section 16 of said ordinance provides: "That no manufacturer who is a citizen of the city of Titusville, shall be considered a dealer or vendor of merchandise within the spirit of this ordinance unless he sells goods not of his own manufacture."

We think that distinguishing such persons from the ones classified in said ordinance is a valid exercise of the power of the legislative body of said city.

We can readily understand how and why manufacturers who regularly have taxable capital invested in a plant, and whose chief item of profit consists in converting the raw material into the finished product, should not be classified with vendors of merchandise whose chief capital consists of their stock in trade, and whose profits are derived from selling at retail at an advanced price over that of the wholesale purchase.

If the entire classification in this ordinance rested on as good, valid, and reasonable grounds as does this distinction or
76 classification, if we may so term it, we would see little to complain of.

Whether or not the merchant tailors, tinsmiths, and tombstone dealers referred to in the case stated come under the manufacturers provided for by section 16 need not now be decided; nor need we decide in this action the rights of defendant against the city for a failure of its officials to enforce the ordinance against others who may properly come under its provisions.

Even were the said 16th section unconstitutional and void, we do not think that would invalidate the entire ordinance.

Vide supra, Fox and Wife's Appeal.

Let us, then, examine the second objection to the validity of this ordinance and, bearing in mind that it is a tax levied for general revenue purposes, determine whether the taxes levied by virtue thereof and under the classification therein adopted are forbidden by the fourteenth amendment to the Federal Constitution, or whether they lack that uniformity imposed by the constitution of this Commonwealth.

The said amendment provides: "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

77 It is true, as urged, that the equal protection of the laws herein enjoined is a pledge of the protection of equal laws; Yick Wo *v.* Hopkins, 118 U. S., p. 369; but it does not forbid a classification of persons or property for various purposes nor enjoin upon the legislative authorities the impossible duty of making the same or equal laws for the several classes. It does compel the equal application of the laws to all members of the same class, allowing classification, which should be based upon reasonable grounds, and is not a mere arbitrary selection.

Gulf, Colorado and Santa Fe R'y *v.* Ellis, 165 U. S., p. 165.

Such classification is not only allowed, but is recognized as necessary, in order that uniformity and equality of taxation and of the just adaption of property to its burdens may be accomplished.

W. U. Tel. Co. *v.* Indiana, 165 U. S., p. 304.

Pacific Express Co. *v.* Seibert, 142 U. S., p. 351.

In all cases where classification for purposes of taxation has been recognized it has been held that the requirements of the Federal Constitution have been fulfilled if the rates, though different for separate classes, operate uniformly on each class.

Chicago R. R. Co. *v.* Iowa, 94 U. S., p. 164.

Dow *v.* Beidelman, 125 U. S., p. 698.

78 Commonwealth *v.* Sharon Coal Co., 164 P. S., p. 305.

Home Ins. Co. *v.* New York, 134 U. S., p. 606.

Kentucky Railroad Tax Cases, 115 U. S., p. 322.

If the ordinance passed and the classification made therein is not in conflict with the Federal Constitution or some valid act of Congress, the court may not say whether the law is the best that could have been enacted, or whether the common

good demands or requires such a law. We can only determine whether, in such a case, the legislative body, acting under the laws and constitution of this Commonwealth, had the power and authority to enact such a law.

The responsibility of the legislative body for so acting, if they had the power so to do, is not to the court, but to the people whom they represent; and for a construction of the Federal laws and Constitution we must look to our Federal courts, while the construction of the constitution and laws of the Commonwealth, so far as they do not conflict with those of the nation, is determined by our own courts.

Chicago R. R. Co. *v.* Iowa, 94 U. S., p. 164.
Memphis Gas Co. *v.* Shelby Co., 109 U. S., p. 400.
United States *v.* New Orleans, 98 U. S., p. 392.
Merriwether *v.* Garrett, 102 U. S., p. 472.
Spencer *v.* Merchant, 125 U. S., p. 355, and the cases therein cited.
79 Palmer *v.* McMahon, 135 U. S., p. 669.
Fallbrook Irrigation District *v.* Bradley, 164 U. S., p. 155.
Lewis *v.* Monson, 151 U. S., p. 549.
Iowa Central Railway Co. *v.* Iowa, 160 U. S., p. 393.
Central Land Co. *v.* Laidley, 159 U. S., p. 109.

No objection is raised in this case as to the method of making the assessments or arriving at valuations. The principal contention is that by virtue of the classification made unequal burdens and rates are imposed upon the several members of different classes, but it is not alleged, with the exceptions heretofore noted, that the ordinance applies to or is enforced differently against the same members of any class.

We therefore conclude that the ordinance in question does not violate the provisions of the Federal Constitution, and we must determine whether or not it is in conflict with the constitution and laws of this Commonwealth.

Article IX, sec. 1, of our constitution declares that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." We herein have a recognition of the classification of subjects for taxation, and a provision that said taxes must be uniform as to each class.

The constitution of this Commonwealth, as well as the
80 Federal Constitution, not only permits classification of subjects of taxation on a proper basis and in the approved manner, but the several classes thereby constituted may be taxed independently and differently.

German Life Ins. Co. *v.* Commonwealth, 85 P. S., p. 519.
Commonwealth *v.* Del. Div. Canal Co., 123 P. S., p. 620.
Pittsburg *v.* Coyle & Co., 165 P. S., p. 64.
Commonwealth *v.* Brewing Co., 145 P. S., p. 86.
Commonwealth *v.* Sharon Coal Co., 164 P. S., p. 305.

We must, therefore, consider whether the classification herein made produces the result of special legislation; whether taxes imposed are uniform, as required by the Constitution, and whether the classification is made upon such basis as is by law required.

It is complained that wholesalers are made a distinct and separate class from retailers, and that the ordinance specially legislates in favor of the wholesalers.

This is true, so far as separately classifying the wholesale dealers is concerned, but each member of the subclass of wholesalers is treated alike, and the tax is uniform upon each member of said division or subclass.

We see no objection to classifying wholesalers and retailers
81 separately. The same principle is involved in the subdivision of the wholesalers as maintains in the general classification under section 3 of the ordinance, and what is said in relation thereto equally applies to the subdivision of wholesalers.

If special legislation is produced in this ordinance it is a result of the mode of classification adopted.

The several members of the respective classes and subclasses, with the exception heretofore noted, are treated alike, and the taxes imposed upon them are uniform throughout their class.

Is the classification herein made legal?

In Ayar's Appeal, 122 P. S., p. 277, the court says: "On the contrary, the underlying principle of all the cases is that classification, with a view of legislating for either class separately, is essentially unconstitutional unless a necessity therefor exists—a necessity springing from manifest peculiarities clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class separately, that would be useless and detrimental to others."

This is as near to a definition of the requirements for classification
as our courts have attempted. It is true this refers to classifi-
82 cation for legislative purposes, but we know of no reason why the same does not obtain in the classification for the purposes of taxation. Each class should have purposes to subserve peculiar to itself, and all its members local functions to perform which differentiates them from the members of each and every other class. When such a state of facts exists classification is not only permissible, but is necessary to subserve the purposes of the members, as a part of the body politic, as well as of their individual classes, and may be the only means whereby uniformity of taxation can be accomplished.

The "classification should be according to some reasonable, practical rule, drawn from experience, which would prevent a gross inequality in the burdens of taxation."

Commonwealth *v.* Canal Co., 123 P. S., p. 620.
Weinman *v.* Pass. R'y Co., 118 P. S., p. 202.

It is the legislative authority that must determine what differences in situation, circumstances, and needs call for a classification, subject, however, to the supervision of the courts, as the final in-

terpreters of the Constitution, and to see that the same is really classification and not special legislation.

Lloyd *v.* Smith, 176 P. S., p. 218.

The classification made by this ordinance is as follows:

83

Retail.

Class.	Business.			Tax.
1	Over	$60,000		$100.00
2	$50,000	to	60,000	80.00
3	40,000	"	50,000	70.00
4	30,000	"	40,000	60.00
5	20,000	"	30,000	50.00
6	10,000	"	20,000	35.00
7	5,000	"	10,000	25.00
8	2,500	"	5,000	15.00
9	1,000	"	2,500	10.00
10			1,000	5.00

Wholesale.

1	$100,000 and upwards			$60.00
2	60,000	to	$100,000	50.00
3	50,000	"	60,000	40.00
4	40,000	"	50,000	35.00
5	30,000	"	40,000	30.00
6	20,000	"	30,000	25.00
7	10,000	"	20,000	20.00
8	5,000	"	10,000	15.00
9	2,500	"	5,000	10.00
10			2,500	5.00

84 Is this classification, made by the proper legislative authority, such as is reasonable, just, and proper, or was it passed for the purpose of or does it produce the result of special legislation for any of the respective classes?

It is urged that it is unequal and unjust. We again repeat that this may be true, as in most cases of assessments we find like results to a greater or less extent, but unless it is grossly so, or the ordinance enacted with the view or effect of producing such results contrary to law, the place to seek relief is with the legislative authority.

It is as impossible to produce exact uniformity in levying taxes as it is to give universal satisfaction, but if no legal principles have been violated we are powerless to adjust all of the inequalities complained of.

The knowledge or judgment of the judiciary under given circumstances as to what is equitable taxation is no better than that of the legislative authority, and as this is the department upon whom is imposed the duty of making the adjustment, there it must rest, so long as they act within their authority.

It may be true that the results produced of advantage to the dealers, from the sources to which this general tax is applied, may be in

the exact or at least approximate ratio of the burdens imposed by this license tax, and that the expense to the municipality in
85 rendering such protection and producing such results is in like proportion. For example, we certainly could not say that the expense to the city of furnishing police and fire protection to the man who does $100,000 worth of business is 100 times as great as for that of him who does $1,000 worth.

We know of no better authority to determine the proper ratio and adjust the burdens of taxation in proportion to the expense imposed and benefits received by the various subjects than the one upon which the law now imposes it.

Classification according to the amount of business done has been frequently recognized in this Commonwealth and by our Federal courts.

Dow *v.* Beidelman, 125 U. S., p. 690.
Chicago R. R. Co. *v.* Iowa, 94 U. S., p. 164.
Allentown *v.* Gross, 132 U. S., p. 322.
Hadtler *v.* Williamsport, 15 W. N. C., p. 138.
Williamsport *v.* Wenner, 172 U. S., p. 173.

The last of which cases was very much like the case at bar, and a classification there adopted very similar, though not so justly discriminating as to the smaller dealers, was held to be a valid exercise of the powers of the city council.

It is argued, however, that in the case of Williamsport *v.* Wenner the initial class was composed of those doing a business of
86 $1,000 or less and paid $1, "and every multiple of that amount of business paid a similar multiple of that amount of tax," and that this was "fair and equitable."

We do not find that the classification thus adopted produced any "fairer" results than does the one at bar. What was argued is true as to the maximum of each class only, and why the man doing $1,100 worth of business and paying the same tax as the one doing $5,000 worth can be considered any more of a fair and equitable proportionate adjustment than the one at bar we do not clearly comprehend.

The right to make such classification seems to be settled by our courts. We are not unfamiliar with a similar classification as to sales, with different rates as to different classes in the State mercantile tax imposed upon vendors of merchandise. True, the act by virtue of which this is made was passed prior to the adoption of our present constitution.

The right to make the classification being determined, we have no doubt as to the legislative authority to impose different "rates" upon the several classes.

And now, July 11, 1898, it is ordered that the defendant pay a fine of seventy-two dollars to the Commonwealth, for the use of the City of Titusville and the costs of prosecution, or give security therefor within ten days from this date, and in default thereof
87 & 88 he shall stand committed to the county jail for a period of twenty days.

Per curiam.

July 11, 1898.—Defendant excepts to the opinion and order of court, and thereupon bill of exceptions is sealed for said defendant.

FRANK J. THOMAS, *P. J.* [SEAL.]

* * * * * * *

89–93 COM., for Use, } No. 46. April Term, 1899, Q. S. Crawford
vs. County. Filed July 28th, 1899.
CLARK. }

W. W. PORTER, *J.:*

The contention here arises upon a case stated. The sole question at issue is the constitutionality of an ordinance of the city of Titusville under which a license tax is sought to be collected. The municipal legislation is alleged to be in violation of the provisions of the Federal Constitution and of the constitution of the Commonwealth. The sentence imposed by the court below affects the liberty of the defendant. These are important matters and would ordinarily lead us to a full expression of our views. The court below has, however, filed an opinion in which all the authorities seemed to have been examined with care. No question raised seems to have been overlooked or failed of adequate consideration. The conclusions reached put in application the principles adequately discussed. A repetition of the discussion would throw no additional light upon the case. We are all of opinion that the judgment of the court below should be sustained.

Judgment affirmed.

94 *Specifications of Error.*

In the Supreme Court of Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA, }
Use of the City of Titusville, } At No. 323 of January Term,
v. 1899.
L. S. CLARK, Appellant. }

And now, April 23, 1900, comes the appellant, by his attorney, and files the following specifications of error in the above-entitled case:

First. The court erred in not holding that the ordinance of the city of Titusville approved June 25, 1888, and recited in the case stated was unconstitutional, and therefore invalid, because the taxes levied thereunder were not uniform, and therefore conflicted with the first section of the ninth article of the constitution of this Commonwealth.

Second. The court erred in not holding that the said ordinance conflicted with the second secton of the ninth article of the constistitution of Pennsylvania because of the exemption from taxation therein contained, and was therefore invalid and of none effect.

Third. The court erred in not holding the ordinance in question

unconstitutional because it denied to the prisoner the equal
95 protection of the laws of this Commonwealth, and therefore conflicted with the fourteenth amendment to the Constitution of these United States.

Fourth. The court erred in not holding the said ordinance unconstitutional because special legislation and forbidden by the first section of the ninth article of the constitution of this Commonwealth.

Fifth. The court erred in not holding the ordinance complained of unconstitutional and invalid and of none effect.

Sixth. The court erred in imposing a sentence upon the prisoner, the appellant.

JULIUS BYLES,
EUGENE MACKEY,
Attorneys for Appellant.

Endorsement: No. 323. January Term, 1899. Commonwealth of Pennsylvania, use of City of Titusville, appellee, *v.* L. S. Clark, appellant. Specifications of error. Filed Apr. 23, 1900, in supreme court. Byles & Mackey.

Opinion.

COMMONWEALTH, to Use of the City of Titusville, *v.* L. S. CLARK. } No. 323. January Term, 1899. Appeal from the Superior Court.

96–102 Filed May 7, 1900.

PER CURIAM:

We concur entirely with the views expressed in the opinion of the learned judge of the court of quarter sessions in this case, and on that opinion the judgment is affirmed.

STATE OF PENNSYLVANIA, *Eastern District,* } *ss:*

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do hereby specify that the above and foregoing is a true copy of the opinion in the above-entitled cause so full and entire as appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Philadelphia, this 7th day of June, A. D. 1900.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

{ Ten-cent United States internal-revenue stamp, canceled 6, 7, 1900. C. S. G. }

103 In the Supreme Court of the United States.

L. S. CLARK, Plaintiff in Error,
v.
THE CITY OF TITUSVILLE, Defendant in Error.
} At No. 325 of October Term, 1900.

And now, September 18, 1900, comes the plaintiff in error, by his counsel, and files the following assignments of error to the action of the supreme court of Pennsylvania:

First. The said court erred in not holding that the ordinance of the city of Titusville passed and approved June 25, 1888, and recited in the case stated at length, conflicts with the fourteenth amendment to the Constitution of the United States, and is therefore unconstitutional, null, and invalid, because in subdividing the merchants and tax-payers of the said city and their property into so-called "classes," which differ not in kind, but only in amount or value, and then levying or assessing upon each of such so-called "classes" so created taxes which do not operate uniformly upon the
104 members of each so-called "class," inasmuch as the lowest amount or value of property therein is required to pay the same amount of tax with the highest amount or value of property therein, the ordinance deprives plaintiff in error of his property without due process of law and denies to him the equal protection of the laws.

Second. The said court erred in not holding that the said ordinance conflicts with the fourteenth amendment to the Constitution of the United States and is unconstitutional, null, and invalid because in subdividing the merchants and tax-payers of the said city into so-called "classes," which differ not in kind, but only in amount or value, and then levying or assessing upon each of the said "classes" taxes which decrease in rate or ratio as the value of the "class" increases, the ordinance deprives the plaintiff in error of his property without due process of law and denies to him the equal protection of the laws.

Third. The said court erred in not holding that the said ordinance conflicts with the fourteenth amendment to the Constitution of the United States and is unconstitutional, null, and void because all the so-called "classes" erected by the said ordinance by value or quantity of business or property are but subdivisions of a class, and imposing taxes upon such subdivisions without regard to a
105 common ratio either as between the several subdivisions themselves or as between the members of each of the said subdivisions deprives the plaintiff in error of his property without due process of law and denies to him the equal protection of the laws.

Fourth. The said court erred in not holding that the classification attempted by the said ordinance deprives plaintiff in error of his property without due process of law and denies to him the equal protection of the laws and conflicts with the fourteenth amendment to the Constitution of the United States, and that the ordinance is unconstitutional, invalid, and null.

Fifth. The court erred in affirming the judgment or sentence imposed upon the plaintiff in error by the court of quarter sessions of Crawford county, Pennsylvania, and in not discharging him from custody.

Wherefore the plaintiff in error prays that the judgment or sentence aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things he hath lost by reason of the said judgment or sentence.

EUGENE MACKEY,
Counsel for the Plaintiff in Error.

106 And now, September 18, 1900, comes the plaintiff in error, by his counsel, and declares the foregoing as the assignments of error upon which he intends to rely upon the argument of this case, and that the parts of the record in this case which he thinks necessary for the consideration of the foregoing assignments of error are the "case stated" or "statement of facts" agreed upon by the parties to this suit, the opinions of the court of quarter sessions of Crawford county, Pennsylvania, and of the superior and supreme courts of the State of Pennsylvania, and the assignments of error filed in the supreme court of Pennsylvania to the action of the superior court thereof.

EUGENE MACKEY,
Counsel for Plaintiff in Error.

I accept service this September 18, 1900, of plaintiff's foregoing declaration of the errors upon which he intends to rely and of the parts of the record he thinks necessary for the consideration thereof.

GEO. FRANK BROWN,
Solicitor of The City of Titusville, Defendant in Error.

107 [Endorsed:] No. 325, of October term, 1900. L. S. Clark, plaintiff in error, *v.* The City of Titusville, defendant in error. Plaintiff's assignments of error and declaration of the parts of the record he thinks necessary for the consideration thereof, with acceptance of service thereof by the solicitor of the defendant in error. Eugene Mackey, Titusville, Penna.

108 [Endorsed:] File No., 17,810. Supreme Court U. S., October term, 190-. Term No., 325. L. S. Clark, pl'ff in error, *vs.* The City of Titusville. Assignments of error and designation by pl'ff in error of parts of record to be printed and acceptance of service. Office Supreme Court U. S. Filed Sept. 19, 1900. James H. McKenney, clerk.

Endorsed on cover: File No., 17,810. Pennsylvania supreme court. Term No., 325. L. S. Clark, plaintiff in error, *vs.* The City of Titusville. Filed June 22nd, 1900.